§ 875. Interstate communications

(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(As amended Nov. 10, 1986, P. L. 99-646, § 63, 100 Stat. 3614.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1986. Act Nov. 10, 1986, in subsecs. (a)-(d), inserted "or foreign".

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur:

31A Am Jur 2d, Extortion, Blackmail, and Threats §§ 21, 64.

31A Am Jur 2d, Extortion, Blackmail, and Threats § 64.

Forms:

15 Federal Procedural Forms L Ed, Telecommunications § 62:1.

Annotations:

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 ALR4th 852.

State criminal prosecutions of union officer or member for specific physical threats to employer's property or person, in connection with labor dispute. 43 ALR4th 1141.

Texts:

Bailey and Rothblatt, Defending Business and White Collar Crimes (2d Ed), Ch. 26, Extortion and Related Offenses.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

3. Relationship with other laws

State offense of attempted extortion is properly assimilated into federal prosecution under 18 USCS § 13 where proscribed conduct is not same as that punished under 18 USCS § 873, because there has been no threat to expose violation of federal law, or under 18 USCS § 875, because threat has not been transmitted in interstate commerce. United States v Teplin (1985, CA4 Va) 775 F2d 1261.

Defendant was entitled to have his mental defect evidence considered on issue of whether he possessed mental capacity to form specific intent to threaten individuals and to transmit his threats in violation of 18 USCS §§ 875 and 876, since diminished capacity defense under 18 USCS § 17 is relevant where showing of specific intent is required. United States v Twine (1988, CA9 Wash) 853 F2d 676.

5. Transmission in interstate commerce

Ransom demand transmitted from Mexico to Texas is not interstate crime under 18 USCS § 875, since transmission was in foreign commerce, not in interstate commerce. United States v Lopez-Flores (1984, WD Tex) 592 F Supp 1302.

6. Knowledge, intent

When considered in light most favorable to government, evidence that man who sought twenty-million dollar loan from life insurance company in order to buy ranch, and who on several occasions threatened violence to company and company offices if loan was not approved, presented issue of intent to extort for jury determination. United States v Cohen (1984, CA8 Neb) 738 F2d 287.

Showing of "intent to threaten" required by 18 USCS § 875 and § 876 is showing of specific intent. United States v Twine (1988, CA9 Wash) 853 F2d 676.

7. Particular statements constituting threat

Interstate telephone communication, which defendant made to victim for purpose of keeping victim quiet after he

It is not necessary that government prove specific intent to injure or present ability to carry out threat in prosecution under 18 USCS § 875(c). United States v Holder (1969, DC Mont) 302 F Supp 296, affd (CA9 Mont) 427 F2d 715.

12. Admissibility of evidence

No violation of provision of § 605 of Federal Communications Act (47 USCS § 605) that no person not being authorized by sender shall intercept any communication and divulge existence or contents of such intercepted communication to any person is involved in use, with consent of one party to telephone conversation, of regularly used telephone extension to overhear conversation; hence conviction of crime of transmitting interstate communication threatening life of another, in violation of federal statute (18 USCS § 875(b)), is not vitiated by admission in evidence of contents of telephone conversation, so overheard, in course of which threat in question was made. Rathbun v United States (1957) 355 US 107, 2 L Ed 2d 134, 78 S Ct 161, reh den 355 US 925, 2 L Ed 2d 355, 78 S Ct 363.

Telephone toll slips which were regularly employed by telephone company to record fact that long distance telephone calls were made and which reflected that during night in question calls had been placed and made from defendant's home to home of victim of alleged threats were admissible in prosecution for violation of Federal Extortion Act, in light of collateral proof tending to link defendant with calls; notes which were found in defendant's home pursuant to reasonable search incident to lawful arrest and on which were pencilled name of intended victim of alleged threats were admissible without further foundation in same prosecution. Seeber v United States (1964, CA9 Ariz) 329 F2d 572.

In a prosecution under 18 USCS § 875(c), where defendant telephoned his ex-wife and threatened to throw acid in the face of her mother, evidence of his subsequent call to the mother containing the same threat was admissible to show defendant's general intent to threaten, which is an essential element of the crime charged. United States v Le Vison (1969, CA9 Alaska) 418 F2d 624.

Testimony concerning several earlier threatening local calls made by defendant to victim is admissible as tending to establish intent to commit offense and as establishing criminal scheme to threaten victim by telephone. United States v Smith (1970, CA5 La) 433 F2d 1266, cert den 401 US 977, 28 L Ed 2d 328, 91 S Ct 1206.

In prosecution for use of interstate communication in attempt to extort $25,000, trial court properly excluded evidence of truth of damaging allegations underlying threat to injure reputation of extortion victim; trial court properly excluded evidence concerning truth of statements defendant made about his friend, because it was intent and purpose of use of statements, and not truth of statements, that was important in determining guilt of defendant. United States v Von Der Linden (1977, CA9 Or) 561 F2d 1340, cert den (US) 56 L Ed 2d 68, 98 S Ct 1621.

13. Sufficiency of evidence

In prosecution for violation of 18 USCS § 875(c), telephone company records and victim's testimony that operator identified call as originating from New Orleans and that he recognized defendant's voice was amply sufficient to establish element of authorship. United States v Smith (1970, CA5 La) 433 F2d 1266, cert den 401 US 977, 28 L Ed 2d 328, 91 S Ct 1206.

Evidence constituted sufficient basis for jury to conclude that defendant was person who made threatening call, such evidence consisting of (1) testimony that caller who made call claimed to be defendant, (2) telephone company records indicating call from defendant's mother's house to victim's office on same date and at same time that threatening call was made, (3) testimony that someone at defendant's mother's house identifying himself as defendant admitted that he made threatening call, and (4) testimony that defendant, while at victim's office, stated in presence of witnesses that victim "was a sorry excuse for a human being and he should be dead". United States v Bozeman (1974, CA5 Fla) 495 F2d 508, cert den 422 US 1044, 45 L Ed 2d 696, 95 S Ct 2660.

Conviction for violation of 18 USCS § 875(c) requires proof of transmission in interstate commerce, and evidence could not sustain finding that defendant's transmitter, normally incapable of broadcasting across state lines, had done so on occasion in question. United States v Oxendine (1976, CA9 Nev) 531 F2d 957.

It is sufficient to support defendant's conviction if jury finds that defendant held specific intent to communicate threat to injure. United States v Kelner (1976, CA2 NY) 534 F2d 1020, 34 ALR Fed 767, cert den 429 US 1022, 50 L Ed 2d 623, 97 S Ct 639.

On evidence presented, jury could properly find defendant was author of telephone call, in violation of 18 USCS § 875(c), where evidence consisted of (1) testimony of telephone operator that she had placed call for person who identified himself as "Bill Holder of the Wyoming coin shop," that during past years she had placed perhaps 200 calls for man who identified himself in this exact manner, and that voice was same on previous 200 occasions, (2) according to long-

distance toll ticket, that operator prepared at time of call, call originated from certain telephone number in Billings and was made to certain telephone number in Washington, D. C., and (3) testimony of employee at FBI Washington office that he was called to telephone at FBI headquarters, that telephone number there was same as called from Billings, and that caller identified himself as Bill Holder of Billings, Montana, and went on to make alleged threat. United States v Holder (1969, DC Mont) 302 F Supp 296, affd (CA9 Mont) 427 F2d 715.

14. Questions of fact

Lay testimony about defendant's penchant for unusual behavior, and expert testimony about possibility of transient psychotic episodes was clearly sufficient to eliminate presumption of sanity and require government to demonstrate beyond reasonable doubt that defendant was sane when he made interstate ransom demand, but expert opinion that defendant was not in midst of transient psychotic episode at time of offense, and extensive lay testimony about defendant's actions at time of offense, created sufficient evidence of sanity to go to jury and to sustain conviction. United States v Phillips (1975, CA5 La) 519 F2d 48, cert den 423 US 1059, 46 L Ed 2d 650, 96 S Ct 796.

Whether letter to woman, referring to reports of her continued nefarious and immoral conduct and stating that writer would "deal with you and your cohorts", constituted threat to injure person of victim was question of fact for trier of facts, and could not be determined on motion to dismiss indictment. United States v Peonell (1956, DC Cal) 144 F Supp 317.

15. Instructions

Where defense to charge of transmitting threat by telephone in interstate commerce with intent to extort money was abortive scheme to bribe and did not constitute confession and avoidance, court's charge defining crime of extortion and posing question whether transaction was loan, bribe, or extortion adequately covered defendant's theory of defense without giving legal definition of bribery. United States v Blount (1956, CA2 NY) 229 F2d 669.

On whole, District Court's charge to jury sufficiently covered subject, as purpose of adding word "knowingly" was to ensure that no one would be convicted for act because of mistake or inadvertence, or other innocent reason. Seeber v United States (1964, CA9 Ariz) 329 F2d 572.

Defendant charged with violation of 18 USCS § 875 was not entitled to instruction that making telephone call without disclosure of identity was lesser-included [illegible] 18 USCS § 223, since latter offense contains element, non-disclosure of identity, which is not required under former. United States v Lampley (1978, CA3 Pa) 573 F2d 783.

16. Judgment and sentence

There was no power under predecessor to 18 USCS § 875 which permitted judgment to be passed in one district and state upon indictment found in another. United States v Bink (1947, DC Or) 74 F Supp 603.